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Attorneys for Bank of Saipan, Inc, Defendant Intervenors

**IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN MARIANA ISLANDS**

RANDALL T. FENNEL, Jr.

Plaintiff.

vs.

MATTHEW T. GREGORY, former Attorney General, GREGORY BAKA, Acting Attorney General, ANTHONY WELCH, Assistant Attorney General, TOM J. SCHWEIGER, Assistant Attorney General, and DOES 1-20, in their official and individual capacities.

Defendants.

CIVIL CASE NO. CV 09-0019

**NOTICE OF RIPENESS FOR
SCHEDULING MOTION TO
INTERVENE**

Date:

Time:

1 The Proposed Defendant Intervenor, Bank of Saipan, Inc. (the “Bank”), hereby
 2 respectfully submits Notice that pursuant to the Court’s prior Order the time for scheduling the
 3 Bank’s Motion to Intervene is now ripe.

4 The Bank filed its motion to intervene on August 28, 2009. After holding a status
 5 conference with the parties and the Bank, on September 2, 2009 the Court ordered that “[i]f
 6 necessary, proposed intervenor’s motion to intervene shall be scheduled according to the court’s
 7 local rules after the order has issued on defendants’ pending motion to dismiss.” (Order after
 8 Status Conference with Parties and Proposed Intervenor, filed 9/2/09, at 2:9-12.) The Order
 9 addressing defendants’ motion to dismiss—granting in part and denying in part that motion—was
 10 issued on September 28, 2009. (See 9/28/09 Order Denying in Part and Granting in Part
 11 Defendants’ Motion to Dismiss for Failure to State a Claim, with Leave to Amend.) Accordingly,
 12 pursuant to the Court’s September 2 Order, it is now time to schedule the motion to intervene.

13 Further, the Notice of Appeal filed on October 9, 2009 by defendants Matthew T.
 14 Gregory, Gregory Baka, Anthony Welch, and Tom J. Schweiger should not in any way affect the
 15 Court’s schedule for hearing the motion to intervene. Indeed, even if the Court were to determine
 16 that certain aspects of the case should be stayed pending the appeal, the Court would still retain
 17 jurisdiction to address the Bank’s motion to intervene, and there would be no other justification
 18 for further delaying the hearing on that motion (or, for that matter, on the Bank’s Motion to
 19 Dismiss or, in the Alternative, to Stay Proceedings). *See Plotkin v. Pacific Tel. and Tel. Co.*, 688
 20 F.2d 1291, 1293 (9th Cir.1982) (“An appeal from an interlocutory order does not stay the
 21 proceedings [in the district court], as it is firmly established that an appeal from an interlocutory
 22 order does not divest the trial court of jurisdiction to continue with other phases of the case.”);
 23 *Grauberger v. St. Francis Hospital*, 169 F. Supp. 2d 1172, 1175 n. 2 (N.D. Cal. 2001)
 24 (“defendants’ motion to dismiss does not implicate the issues raised by defendants’ interlocutory
 25 appeal. Accordingly, the Court is not divested of jurisdiction to proceed with the instant
 26 motion.”); *Cabral v. County of Glenn*, 2009 WL 1911692, 1 (E.D. Cal. July 1, 2009).

27 With regard to scheduling a hearing date, under the Local Rules a motion should be heard
 28

1 on the fourth Thursday after the week in which it was filed, or, in this case, after the Court's
2 Order addressing the motion to dismiss was issued. (See L.R. 7.1(c)(1).) To ensure that the
3 parties and Court have an adequate opportunity to address the motion, and to take Thanksgiving
4 Day into account, the Bank of Saipan respectfully requests that the motion to intervene be
5 scheduled for Thursday, December 3, 2009, or as soon thereafter is convenient to the Court.
6 Under the normal briefing schedule (keyed to the filing of this Notice) the Opposition would be
7 due November 12, 2009 and the Reply due November 19, 2009.

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10 Respectfully submitted this 28th day of October, 2009.

11 **LAW OFFICE OF WILLIAM FITZGERALD**
12 **CALVO & CLARK, LLP**
13 *Attorneys for Bank of Saipan, Inc,
Defendant Intervenors*

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15 By: /s/
16 William M. Fitzgerald

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